

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BENNY LYNN ISOM,)	
)	
Petitioner,)	
)	1:16CV853
v.)	1:03CR241-1
)	1:03CR242-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Recommendation and Order ("Recommendation") filed on November 2, 2018, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (1:03CR241-1 (Doc. 158); 1:03CR242-1 (Doc. 148).) In the Recommendation, the Magistrate Judge recommends that any claims Petitioner has raised as to case number 1:03CR242-1 be dismissed for lack of jurisdiction, that the Government's Motion to Dismiss, (1:03CR241-1 (Doc. 148)), be granted, that Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, (1:03CR241-1 (Doc. 141)), and Amended Motion, (1:03CR241-1 (Doc. 145)), be denied, and that judgment be entered dismissing this action without issuance of a certificate of appealability. The Recommendation was served on the parties to this action on November 2, 2018 (1:03CR241-1

(Doc. 159); 1:03CR242-1 (Doc. 149).) Petitioner filed timely objections, (1:03CR241-1 (Doc. 161)), to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

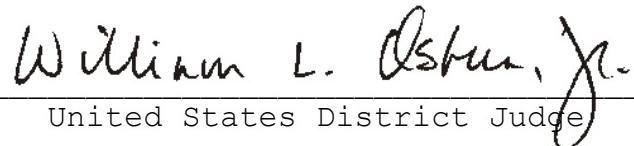
IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (1:03CR241-1 (Doc. 158); 1:03CR242-1 (Doc. 148)), is **ADOPTED**. **IT IS FURTHER ORDERED** that the previous stay entered in 1:03CR242-1 based on Beckles v. United States, 580 U.S. ___, 137 S. Ct. 886 (2017) is lifted, that any claims Petitioner has raised as to case number 1:03CR242-1 are dismissed for lack of jurisdiction, that the Government's Motion to Dismiss, (1:03CR241-1 (Doc. 148)), is **GRANTED**, and that

Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, (1:03CR241-1 (Doc. 141)), and Amended Motion, (1:03CR241-1 (Doc. 145)), are **DENIED**.

IT IS FURTHER ORDERED that the clerk's office administratively terminate Docket Entries 137, 139 and 141 in case number 1:03CR242-1 as incorrectly filed by the parties.

A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 30th day of January, 2019.



United States District Judge